

APPEAL NO. 021759
FILED AUGUST 27, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 4, 2002. The appellant (claimant) appeals the hearing officer's determinations that he did not sustain a compensable injury on _____, and that he does not have disability. The respondent (carrier) files its response urging affirmance.

DECISION

Affirmed.

First we address the claimant's contention that the hearing officer erred when he cautioned an observer¹ that she may be asked to leave the hearing if she continued speaking during the course of the hearing. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §140.4(c) (Rule 140.4(c)) provides that, "To maintain and enforce proper conduct and decorum at a proceeding... the presiding officer may take appropriate action, including, but not limited to: (1) issuing a warning; or (2) excluding any person from the proceeding...." Furthermore, Rule 142.2(14) provides that the hearing officer is authorized to "take any other action as authorized by law, or as may facilitate the orderly conduct and disposition of the hearing." After review of the record and the complained-of error, we reject the claimant's argument. The hearing officer was simply fulfilling his duties to enforce proper conduct and decorum at the proceeding.

There was conflicting evidence offered at the CCH. The claimant contends he was injured on the job. The claimant's coworkers testified that on the date the claimant contends he was injured he was fired when he was caught asleep on the job. The coworkers also testified that a week prior to the injury the claimant had told them that he injured his shoulder in an arm wrestling contest at a bar. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). The finder of fact may believe that the claimant has an injury, but disbelieve that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Our review of the record reveals that the hearing officer's injury and disability determinations are supported by sufficient evidence and that they are not so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Thus, no sound basis exists for us to disturb the determinations that the claimant did not sustain a compensable injury or disability on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

¹ There was an agreement at the beginning of the CCH that the observer would not testify at the proceeding.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **EMPLOYERS INSURANCE COMPANY OF WAUSAU** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Roy L. Warren
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge